

**CALENDAR ITEM
C14**

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08/09/16

PRC 1546.1

S 7

V. Caldwell

**RESCISSION OF APPROVAL; ASSIGNMENT AND AMENDMENT OF LEASE AND
REVISION OF RENT AND SURETY**

LESSEE/ASSIGNOR:

Forestar (USA) Real Estate Group, Inc.

ASSIGNEE:

2101-2603 Wilbur LLC

AREA, LAND TYPE, AND LOCATION:

11.88 acres, more or less, of filled and unfilled sovereign lands in the San Joaquin River, adjacent to 2301 Wilbur Road, near the city of Antioch, Contra Costa County.

AUTHORIZED USE:

Continued use and maintenance of a non-operational industrial pier, two five-pile dolphins, a maintenance pier, water intake pipeline, electrical substation, storm water outfall, instrumentation shed, three day beacons, and surge basin.

LEASE TERM:

14 years, beginning August 9, 2008.

CONSIDERATION:

This lease provides that the Commission may modify the rent periodically during the lease term. Pursuant to this provision, staff has conducted a review of the rent under this lease, and recommends rent be revised from \$125,617 to \$140,075 per year, effective August 9, 2016.

PROPOSED AMENDMENT:

Amend the Lease to include a Corporate Parent Guaranty: Commercial Development Company, Inc., to provide a corporate parent guaranty for the performance of the lease obligations of its subsidiary, 2101-2603 Wilbur LLC.

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SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in an amount no less than \$5,000,000 per occurrence.

Bond:

This lease provides that Lessor may modify the amount of the surety bond or other security device in the event of 1) an assignment, transfer, exchange, or sale of the littoral property; 2) any additionally authorized improvements and alterations or purposes; 3) any reactivation of the authorized improvements; and 4) any modification of consideration. Pursuant to this provision, staff has conducted a review of the surety bond under this lease, and recommends the bond be revised from \$350,000 to \$500,000, effective at the close of escrow but no later than September 30, 2016.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, and 6301; California Code of Regulations, Title 2, section 2000, subdivision (b).

Public Trust and the State's Best Interests Analysis:

On December 3, 2008, the Commission authorized a General Lease - Industrial Use to Forestar (USA) Real Estate Group, LLC. The upland property is currently in escrow with 2101-2603 Wilbur LLC, and Forestar has requested an assignment of the lease, effective on the close of escrow but no later than September 30, 2016.

On June 28, 2016, the Commission authorized an assignment of lease from Forestar (USA) Real Estate Group, Inc., to 2101-2603 Wilbur LLC in addition to a revision of rent (Calendar Item C26). Subsequent to the Commission's approval, but before the assignment was executed, staff determined a Parent Guaranty from Commercial Development Company, Inc., the parent company of the recently formed 2101-2603 Wilbur LLC would be in the best interests of the State. Staff is now requesting that the June 28, 2016, authorization be rescinded and that an assignment and amendment of the General Lease – Industrial Use to include the Corporate Parent Guaranty be authorized.

Under a voluntary agreement approved by the California Environmental Protection Agency and the Department of Toxic Substances Control,

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Forestar has completed the environmental cleanup and has obtained a "Certificate of Completion" from the California Environmental Protection Agency. Under the terms and conditions of the lease, the Lessee is required to seek prior authorization from the Commission for any proposed new uses and prior to the reactivation of the improvements on State lands. 2101-2603 Wilbur LLC accepts all existing lease conditions.

The recommended action will not substantially interfere with the Public Trust needs at this time and at this location. The assignment, amendment, and revision of rent and surety will not change the use of the lease premises. Additionally, the proposed amendments will provide for a Corporate Parent Guaranty of the responsibility incurred by the Assignee pursuant to the lease and increase the surety associated with the lease. For these reasons, staff recommends finding the proposed action is in the best interests of the state at this time.

OTHER PERTINENT INFORMATION:

1. Assignee is under contract with the Assignor to acquire the upland adjoining the lease premises at the close of escrow but no later than September 30, 2016.
2. Staff conducted the rent review called for in the lease and recommends the rent be increased based on the California Consumer Price Index, effective August 9, 2016.
3. Staff conducted the surety review called for in the lease and recommends the surety be increased, effective upon the close of escrow but no later than September 30, 2016.
4. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction; Strategy 2.1 to optimize returns for the responsible development and use of State lands and resources, both onshore and offshore; and Strategy 2.2 to ensure timely receipt of revenues and royalties from the use and development of State lands and minerals.
5. Approving the rescission of approval; and application for a lease assignment, amendment, and revision of rent and surety is not a project

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as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, sections 15378, subdivision (b)(5).

EXHIBITS:

- A. Site and Location Map
- B. Land Description

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease will not substantially interfere with the Public Trust needs and values at this location at this time, or for the foreseeable term of the lease, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

AUTHORIZATION:

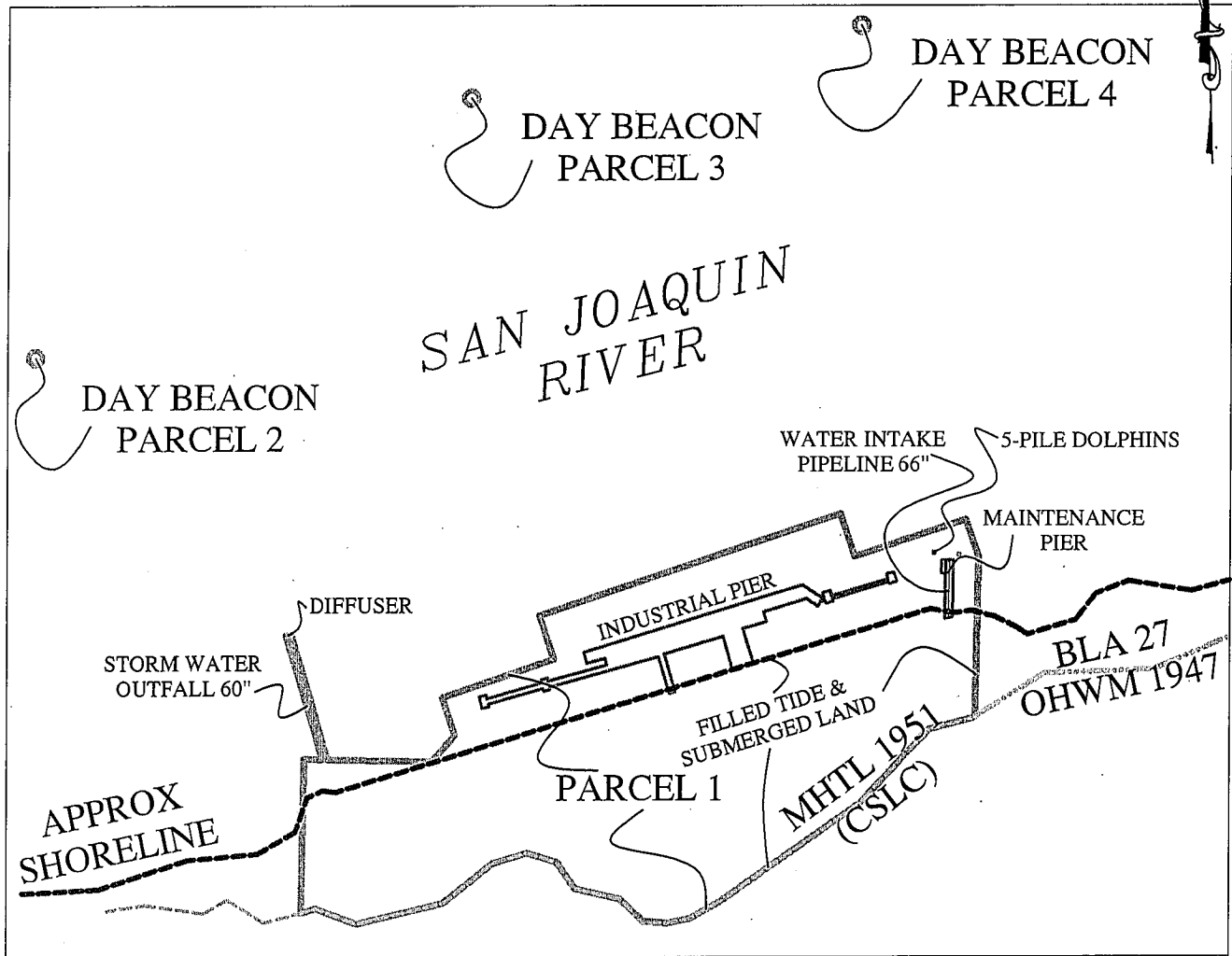
1. Rescind previous authorization for the assignment and revision of rent of Lease No. PRC 1546.1, a General Lease – Industrial Use, on June 28, 2016, to 2101-2603 Wilbur LLC.
2. Authorize the assignment of Lease No. PRC 1546.1, a General Lease – Industrial Use, of filled and unfilled sovereign land as shown on Exhibit A, Site and Location Map (for reference purposes only) and as described in Exhibit B, Land Description, attached and by this reference made a part hereof, from Forestar (USA) Real Estate Group, LLC to 2101-2603 Wilbur LLC; effective on the close of escrow but no later than September 30, 2016.
3. Authorize the amendment of Lease No. PRC 1546.1, a General Lease – Industrial Use, effective on the close of escrow but no later than September 30, 2016, to add a Corporate Parent Guaranty; all other terms and conditions of the lease will remain in effect without amendment.

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4. Approve the revision of rent for Lease No. PRC 1546.1 from \$125,617 per year, to \$140,075 per year, effective August 9, 2008.
5. Approve revision of surety for Lease No. PRC 1546.1 from \$350,000 to \$500,000, effective on the close of escrow but no later than September 30, 2016.

NO SCALE

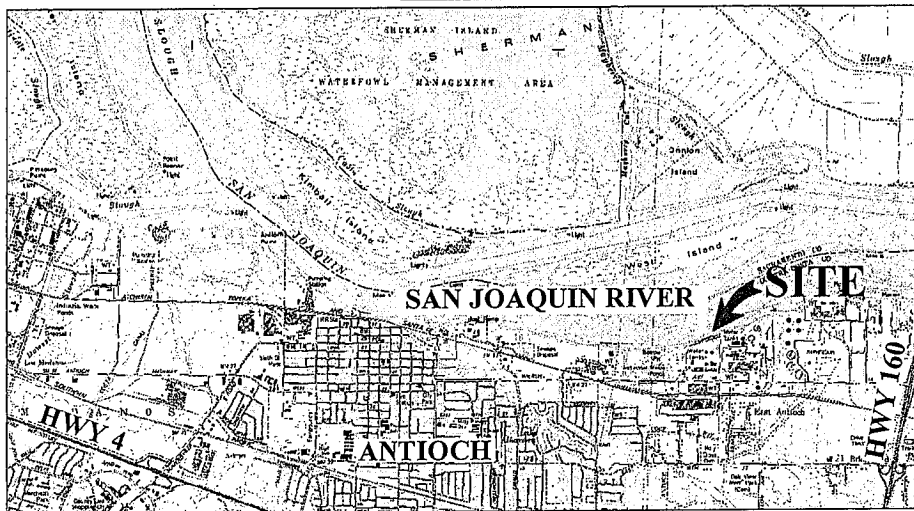
SITE



2301 Wilbur Avenue, Antioch

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit A

PRC 1546.1

APN 051-020-006,012

2101-2603 WILBUR ROAD LLC.

GENERAL LEASE -

INDUSTRIAL USE

CONTRA COSTA COUNTY



MJF 5/06/16

EXHIBIT B

PRC 1546

LAND DESCRIPTION

Four parcels of tide and/or submerged in the bed of the San Joaquin River situate in Contra Costa County, California, more particularly described as follows:

PARCEL 1

A parcel of tide and submerged land in the San Joaquin River approximately one mile west of the Antioch Lift Bridge and two miles east of the City of Antioch, Contra Costa County, California, more particularly described as follows:

BEGINNING at a point on the southerly bank of the San Joaquin River, said point being the westerly terminus of that certain boundary line agreement recorded in Liber 1193, page 189, Official Records, Contra Costa County, from which the corner common to Sections 16, 17, 20 and 21, T2N, R2E, MDM, bears S 45°20'53" E, 1,835.72 feet; thence along the following 31 courses:

- | | | |
|-----|---------------|---|
| 1. | S 58°06'15" W | 4.09 feet; |
| 2. | S 75°25'00" W | 78.48 feet; |
| 3. | S 42°57'46" W | 179.01 feet; |
| 4. | S 54°54'46" W | 295.74 feet; |
| 5. | S 60°35'34" W | 63.13 feet; |
| 6. | S 77°54'19" W | 42.95 feet; |
| 7. | N 84°41'08" W | 43.19 feet; |
| 8. | N 46°25'56" W | 56.59 feet; |
| 9. | N 77°09'51" W | 81.02 feet; |
| 10. | N 35°04'25" W | 57.43 feet; |
| 11. | N 72°53'50" W | 54.41 feet; |
| 12. | S 73°33'34" W | 63.60 feet; |
| 13. | S 51°48'51" W | 113.23 feet; |
| 14. | S 76°40'32" W | 156.20 feet; |
| 15. | N 69°26'38" W | 76.90 feet; |
| 16. | S 74°57'13" W | 28.68 feet; |
| 17. | N 01°06'16" E | 270.00 feet; |
| 18. | S 88°53'42" E | 33.27 feet; |
| 19. | N 17°05'24" W | 226.89 feet; |
| 20. | N 72°54'36" E | 10.00 feet; |
| 21. | S 17°05'24" E | 230.17 feet; |
| 22. | S 88°53'42" E | 182.63 feet; |
| 23. | N 41°05'19" E | 60.86 feet; |
| 24. | N 18°41'01" W | 70.00 feet; |
| 25. | N 71°18'59" E | 210.00 feet; |
| 26. | N 18°41'01" W | 80.00 feet; |
| 27. | N 71°18'59" E | 560.00 feet; |
| 28. | S 18°41'01" E | 80.00 feet; |
| 29. | N 71°18'59" E | 205.23 feet; |
| 30. | S 18°41'01" E | 70.00 feet; |
| 31. | S 01°05'01" W | 280.56 feet to the TRUE POINT OF BEGINNING. |

PARCEL 2 (Day Beacon #3)

A circular parcel of submerged land in the bed of San Joaquin River having a radius of 14 feet and the radius point of said parcel having a CCS 27, Zone 3 coordinates of $N(y) = 555034.64$, $E(x) = 1631697.87$

PARCEL 3 (Day Beacon #5)

A circular parcel of submerged land in the bed of San Joaquin River having a radius of 14 feet and the radius point of said parcel having CCS 27, Zone 3 coordinates of $N(y) = 555497.54$, $E(x) = 1632482.33$

PARCEL 4 (Day Beacon #7)

A circular parcel of submerged land in the bed of San Joaquin River having a radius of 14 feet and the radius point of said parcel having CCS 27, Zone 3 coordinates of $N(y) = 555630.90$, $E(x) = 1633181.44$

END OF DESCRIPTION

